

## **§ 23.57**

or construction of a concession facility (sometimes referred to as the “build-out”).

(1) Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

## **§ 23.57 What happens if a recipient falls short of meeting its overall goals?**

(a) You cannot be penalized, or treated by the Department as being in non-compliance with this part, simply because your ACDBE participation falls short of your overall goals. You can be penalized or treated as being in non-compliance only if you have failed to administer your ACDBE program in good faith.

(b) If your ACDBE participation falls short of your overall goals, FAA may require you to submit to the FAA a statement of the reasons why you were unable to meet it and the steps you are taking to meet your overall goals or to adjust them based on changed circumstances.

(c) In response to your submission, FAA may require you to implement appropriate remedial measures.

## **§ 23.59 What is the role of the statutory 10 percent goal in the ACDBE program?**

(a) The statute authorizing the ACDBE program provides that, except to the extent the Secretary determines otherwise, not less than 10 percent of concession businesses are to be ACDBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs’ opportunities to participate in airport concessions.

(c) The national 10 percent aspirational goal does not authorize or require recipients to set overall or concession-specific goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

## **49 CFR Subtitle A (10–1–06 Edition)**

## **§ 23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?**

You must not use quotas or set-asides for ACDBE participation in your program.

## **Subpart E—Other Provisions**

## **§ 23.71 Does a recipient have to change existing concession agreements?**

Nothing in this part requires you to modify or abrogate an existing concession agreement (one executed before April 21, 2005) during its term. When an extension or option to renew such an agreement is exercised, or when a material amendment is made, you must assess potential for ACDBE participation and may, if permitted by the agreement, use any means authorized by this part to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

## **§ 23.73 What requirements apply to privately-owned or leased terminal buildings?**

(a) If you are a recipient who is required to implement an ACDBE program on whose airport there is a privately-owned or leased terminal building that has concessions, or any portion of such a building, this section applies to you.

(b) You must pass through the applicable requirements of this part to the private terminal owner or lessee via your agreement with the owner or lessee or by other means. You must ensure that the terminal owner or lessee complies with the requirements of this part.

(c) If your airport is a primary airport, you must obtain from the terminal owner or lessee the goals and other elements of the ACDBE program required under this part. You must incorporate this information into your concession plan and submit it to the FAA in accordance with this part.

(d) If the terminal building is at a non-primary commercial service airport or general aviation airport or reliever airport, you must ensure that the owner complies with the requirements in § 23.21(e).